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FEB 27 2004

JAMES BONINI, Clerk
CINCINNATI, OHIO

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

THE KROGER CO.,	:	Case No.: C-1-02-439
	:	
Plaintiff,	:	Beckwith, J.
	:	Perelman, M.J.
	:	
v.	:	<u>THE KROGER CO'S MOTION FOR</u>
	:	<u>SUMMARY JUDGMENT ON ALL CLAIMS</u>
	:	<u>AND MEMORANDUM IN SUPPORT</u>
MALEASE FOODS CORP.,	:	
	:	
Defendant.	:	

Plaintiff The Kroger Co. ("Kroger") moves for summary judgment on its declaratory judgment, breach of contract and unjust enrichment claims. Kroger respectfully requests that this Court grant a declaration that Defendant Malease Foods Corp. ("Malease") is in material breach of its obligations under three April 1983 Leases; that Kroger fulfilled its obligations under those leases—including the valid exercise of Kroger's right to purchase all interests in three parcels of real property; and that Malease is required to sell its interest in the parcels to Kroger.

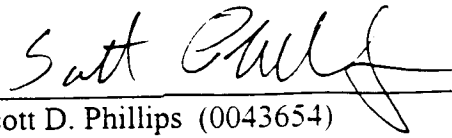
Kroger requests injunctive relief requiring Malease to sell its interests in the three parcels in accordance with the terms of the three April 1983 Leases.

Kroger requests an award of compensatory damages, costs and fees due to the delay in Malease executing its duties in relinquishing its interests in the three parcels under the April 1983 Leases in the amount of \$670,392.94 with pre and post judgment interest compounding as of October 30, 2003 plus an additional \$95,770.42 per month after October 30, 2003 with pre and post judgment interest compounding on each additional amount, plus costs and fees.

Kroger further requests that the Court grant summary judgment on all Malease counterclaims: that Malease is not entitled to a declaratory judgment, renewable rents; funds held by the Court in escrow; or damages under an unjust enrichment claim.

This Motion for Summary Judgment is supported by the attached Memorandum in Support, attached deposition and affidavit testimony and attached contracts and documents.

Respectfully submitted,



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